

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt  
Clerk

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Filed: November 15, 2018

Mr. Bret Jacob Chaness  
Rubin Lublin  
3145 Avalon Ridge Place  
Suite 100  
Peachtree Corners, GA 30071

Mr. Edward Faria  
2479 Murfreesboro Road  
Unit 507  
Nashville, TN 37217

Re: Case No. 18-5528, *Edward Faria v. Rubin Lublin TN, PLLC*  
Originating Case No. : 3:17-cv-00903

Dear Mr. Faria and Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Karen S. Fultz for Jill Colyer  
Case Manager  
Direct Dial No. 513-564-7024

cc: Mr. Keith Throckmorton

Enclosure

Mandate to issue



No. 18-5528

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In his brief on appeal, Faria asserts that Defendant is a debt collector as defined in the FDCPA. He also argues that Defendant failed to submit affidavits or declarations as required by Federal Rule of Civil Procedure 56(c)(4).

A complaint is properly dismissed under Rule 12(b)(6) where it does not contain sufficient facts to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To state a claim under the FDCPA, Faria was required to plead facts that demonstrate that Defendant is a debt collector as defined in that act. *See Bridge v. Ocwen Fed. Bank, FSB*, 681 F.3d 355, 366 (6th Cir. 2012). A defendant is not considered a debt collector under the Act if the debt was not in default when it was obtained by the defendant. *Glazer v. Chase Home Fin. LLC*, 704 F.3d 453, 457 (6th Cir. 2013); *Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103, 106 (6th Cir. 1996). Faria's complaint contains no facts to indicate that Defendant obtained his debt after it was in default. His brief on appeal likewise only makes the conclusory assertion that Defendant is a debt collector under the FDCPA without providing any factual support for that legal conclusion. Accordingly, Faria has failed to allege a plausible FDCPA claim.

Faria also argues that Defendant failed to submit any affidavits or declarations as required by Federal Rule of Civil Procedure 56(c)(4). However, Defendant did not move for summary judgment under Rule 56—Defendant moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. A motion to dismiss for failure to state a claim is reviewed only on the allegations contained in the complaint. *Seaton v. TripAdvisor LLC*, 728 F.3d 592, 596 (6th Cir. 2013).

Because Faria's arguments on appeal are without merit, we **AFFIRM** the district court's order dismissing his complaint for failure to state a claim.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk